

## Delaware River Basin Commission

## § 401.102

### § 401.96 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement in lieu of penalty:

(1) Previous violation, if any, of the Commission's Compact and regulations;

(2) Whether the violation was unintentional or willful and deliberate;

(3) Whether the violation caused adverse environmental consequences and the extent of any harm;

(4) The costs incurred by the Commission or any signatory party relating to the failure to comply with the Commission's Compact and regulations;

(5) The extent to which the violator has cooperated with the Commission in correcting the violation and remediating any adverse consequences or harm that resulted therefrom; and

(6) Whether the failure to comply with the Commission's Compact and regulations was economically beneficial to the violator.

(b) The Commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

### § 401.97 Enforcement of penalties.

Any penalty imposed by the Commission shall be paid within 30 days or such further time period as shall be fixed by the Commission. The Executive Director and Commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the Commission in determining a penalty amount shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to § 14.17 of the Compact.

### § 401.98 Settlement by agreement in lieu of penalty.

A possible violator may request settlement of a penalty proceeding by agreement. If the Executive Director determines that settlement by agree-

ment in lieu of a penalty is in the best interest of the Commission, he may submit to the Commission a proposed settlement agreement in lieu of a penalty. No settlement will be considered by the Commission unless the possible violator has indicated to the Commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount within the time period provided. If the Commission determines not to approve a settlement agreement, the Commission may proceed with a penalty action in accordance with this subpart.

### § 401.99 Suspension or modification of penalty.

The Commission may postpone the imposition of a penalty or provide for reconsideration of the penalty amount imposed pending correction of the condition that gave rise to the violation or pending a satisfactory resolution of any adverse consequences that resulted from the violation.

## Subpart H—Public Access to Records and Information

AUTHORITY: 5 U.S.C. 552.

SOURCE: 40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975, unless otherwise noted. Redesignated at 52 FR 37602, Oct. 8, 1987.

### § 401.101 Policy on disclosure of Commission records.

The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the property rights of persons in trade secrets and confidential commercial or financial information, and the need for the Commission to promote frank internal policy deliberations and to pursue its regulatory activities without disruption.

### § 401.102 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the

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disclosable information would compromise or impinge upon the nondisclosable portion of the record.

#### **§ 401.103 Request for existing records.**

(a) Any written request to the Commission for existing records not prepared for routine distribution to the public shall be deemed to be a request for records pursuant to the Freedom of Information Act, whether or not the Freedom of Information Act is mentioned in the request, and shall be governed by the provisions of this part.

(b) Records or documents prepared by the Commission for routine public distribution, e.g., pamphlets, speeches, public information and educational materials, shall be furnished free of charge upon request as long as the supply lasts. The provisions of this part shall not be applicable to such requests.

(c) All existing Commission records are subject to routine destruction according to standard record retention schedules.

#### **§ 401.104 Preparation of new records.**

The Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Commission pursuant to the procedures herein established. The Commission shall not be required to prepare new records in order to respond to a request for information.

#### **§ 401.105 Indexes of certain records.**

(a) Indexes shall be maintained, and revised at least quarterly, for the following Commission records:

(1) Final opinions and orders made in the adjudication of cases.

(2) Statements of policy and interpretation adopted by the Commission and still in force and not published in the FEDERAL REGISTER or official minutes of Commission meetings.

(3) Administrative staff manuals and instructions to staff that affect members of the public.

(b) A copy of each such index is available at cost of duplication from the FOIA Officer.

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#### **§ 401.106 FOIA Officer.**

The Executive Director shall designate a Commission employee as the FOIA Officer. The FOIA Officer shall be responsible for Commission compliance with the Freedom of Information Act and these regulations. All requests for agency records shall be sent in writing to:

FOIA Officer  
Delaware River Basin Commission  
P.O. Box 7360  
West Trenton, NJ 08628-0360

[40 FR 14056, Mar. 28, 1975; 40 FR 17987, Apr. 24, 1975. Redesignated at 52 FR 37602, Oct. 8, 1987, as amended at 63 FR 45943, Aug. 28, 1998]

#### **§ 401.107 Permanent file of requests for Commission records.**

The Commission shall maintain a permanent file of all requests for Commission records and all responses thereto, including a list of all records furnished in response to a request. This file is available for public review during working hours.

#### **§ 401.108 Filing a request for records.**

(a) All requests for Commission records shall be filed in writing delivered to the FOIA Officer, or by mailing it to the Commission. The Commission will supply forms for written requests.

(b) A request for Commission records shall reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought. A person requesting disclosure of records shall be permitted an opportunity to review them without the necessity for copying them where the records involved contain only disclosable data and information.

(1) If the description is insufficient to locate the records requested, the FOIA Officer will so notify the person making the request and indicate the additional information needed to identify the records requested.

(2) Every reasonable effort shall be made by the staff to assist in the identification and location of the records sought.

(3) In any situation in which it is determined that a request for voluminous